IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.69 OF 2006

Baban Maruti Mungase ...Petitioner

Vs.

Shalan Baban Mungase ...Respondent

Shri H.V.Kode for the Applicant.
Shri A.A.Garge for the Respondent No.1.
Ms S.V.Gajare, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 16, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Petitioner and the learned Advocate appearing for the first Respondent. The first Respondent is the wife who filed an Application under section 125 of the Code of Criminal Procedure, 1973 for grant of monthly maintenance. She alleged that she was a legally wedded wife of the Petitioner. The Application was contested by the Petitioner by filing a reply. The reply is of denial. It is contended by the Petitioner that 25 years prior to the filing of the Application of the first Respondent, the Petitioner had married to one Saguna as per the rites and customs of Hindu religion and he has nothing to do with the first Respondent. The learned Judicial Magistrate (First Class) rejected the Application for maintenance filed by the first

Respondent. In Revision filed by the first Respondent, the Sessions Court has interfered and has granted maintenance in the sum of Rs.750/- per month.

2. The learned Advocate for the Petitioner submitted that there was no evidence whatsoever on record to prove that the first Respondent was legally wedded wife of the Petitioner. He submitted that the entire burden was on the first Respondent to prove that she was the legally wedded wife of the Petitioner. He also invited my attention to order passed by the Sessions Court by which the Petitioner has been directed to pay costs of Rs.5000/- under section 126(3) of the said Code. He submitted that there was no occasion for the learned Judge to pass an order directing payment of costs. He also submitted that there was material on record to show that the Petitioner had married to Saguna. The learned Counsel for the first Respondent supported the impugned judgment and order.

3. It is well settled position of law that while deciding an Application under section 125 of the said Code in a case where there a dispute about the existence of marriage, the learned Magistrate is

required to decide the Application on the basis of prima facie material on record. The order made under section 125 of the said Code is always subject to an order which may be passed by the Civil Court deciding the issue of legality and validity of marriage. The order passed under section 125 of the said Code on prima facie consideration of material on record upholding the relationship as husband and wife is always subject to the outcome of suit for declaration filed by either parties in the Civil Court.

4. In the present case, the learned Sessions Judge has relied upon notice dated 03rd December, 1999 (Exhibit 50) sent on behalf of the Petitioner by his Advocate Shri B.P. Kalokhe. It is found that in the said notice the Petitioner accepted that first Respondent was his wife and infact by the said notice, the first Respondent was called upon to resume cohabitation with him. It appears that the said notice was denied by the Petitioner. Though an attempt was made by the first Respondent to examine the said Advocate as a witness, he preferred not to appear before the court. However, the receipt of the said notice was established in the evidence of the first Respondent.

5. The learned Sessions Judge accepted the said notice sent by the Advocate for the Petitioner as a prima facie evidence of the marriage between the Petitioner and the first Respondent and therefore, proceeded to hold that the first Respondent was entitled to receive maintenance. There was no evidence on record to show that there was a legal and valid marriage between the Petitioner and one Sagunabai. It is difficult to find fault with the aforesaid finding recorded by the Sessions Court in this Petition under Article 227 of the Constitution of India.

6. After considering the material on record, the learned Sessions Judge fixed the maintenance amount of Rs.750/- per month. No fault can be found with the quantum of maintenance fixed by the learned Sessions Judge.

7. Under sub-section 3 of section 126, the learned Magistrate has a power to pass an order as regards payment of costs of the Application under section 125 of the said Code. While allowing the Application for maintenance in Revision filed by the first Respondent, order of payment of costs of Rs.5,000/- has been made

by the learned Sessions Judge. The first Respondent was required to file two proceedings, firstly the Application for maintenance and secondly the Revision Application. Therefore, it is not possible to find fault with the direction for payment of costs issued by the Sessions Court.

8. There is no merit in the Writ Petition and the same is rejected. On the prayer made by the Advocate for the Petitioner, time of three months is granted to deposit entire arrears of maintenance amount payable on the basis of impugned order.

JUDGE